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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/618,813    07/18/00    SILVER    B    4921/100

IM22/0424

HENRY L BRINKS  
BRINKS HOFER GILSON & LIONE  
NBC TOWER SUITE 3600  
P O BOX 10395  
CHICAGO IL 60610

EXAMINER

WONG, L

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

04/24/01

*3*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner of Patents and Trad marks

# Office Action Summary

Application No.

09/618,813

Applicant(s)

Silver

Examiner

Leslie Wong

Group Art Unit

1761



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-29 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-29 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Applicant is reminded to maintain a clear line of demarcation between related applications.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over James, Teeuwen et al, Thon, and Birch et al in view of Lorenzo et al (EP 0787745).

James discloses a liquid food product comprising inulin and a sweetener (see entire patent, especially column 5, lines 50-53).

Teeuwen et al disclose the combination of inulin and a sweetener as a fat and sugar replacement (see abstract).

Thon discloses the use of inulin as a sugar replacer (see abstract).

Birch et al disclose mixtures of inulin, sorbitol, and mannitol (see abstract).

The claims differ as to the use of a specific inulin fraction and the amounts employed.

Laurenzo et al disclose the preparation of inulin fractions having different molecular weights (see entire patent).

The amounts employed are seen to be no more than a matter of choice and well-within the skill of the art. At most the amounts selected are no more than optimization, see In re Boesch 205 USPQ 215.

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It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the inulin fractions of Lorenzo et al in that of James, Teeuwen et al, Thon, and Birch et al because the use of inulin in the production of food products is conventional in the art.

In the absence of a showing to the contrary, the choice of sweetener is seen as no more than a matter of choice and well-within the skill of the art. Polyols, monosaccharides, and disaccharides are notoriously well-known in the food art and Applicant is using these components for no more than their art-recognized function.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability.

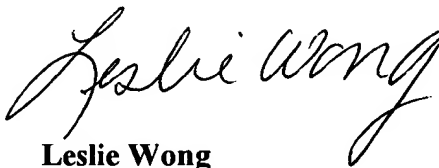
No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday.

The fax number for this Group is (703) 305-7718.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, reading "Leslie Wong". The signature is written in a cursive, flowing style with a large initial "L".

**Leslie Wong**  
**Primary Examiner**  
**Art Unit 1761**

LAW  
April 19, 2001